

AMENDED IN ASSEMBLY AUGUST 29, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

Assembly Concurrent Resolution

No. 74

Introduced by Assembly Member Saldana

**(Coauthors: Assembly Members Chu, Cohn, Evans, Karnette,
Liu, Matthews, Oropeza, and Pavley)**

**(Coauthors: Senators Alquist, Ducheny, Kehoe, Kuehl, Migden, and
Speier)**

June 16, 2005

Assembly Concurrent Resolution No. 74—Relative to
~~commemorating the 33rd anniversary of the enactment of Title IX.~~
*Title IX of the federal Education Amendments of 1972 to the Civil
Rights Act of 1964.*

LEGISLATIVE COUNSEL'S DIGEST

ACR 74, as amended, Saldana. Title IX: 33rd anniversary of its
enactment *and California schools' athletics policies.*

This measure would commemorate the 33rd anniversary of the
enactment of Title IX of the federal Education Amendments of 1972
to the Civil Rights Act of 1964 *and would urge California educational
institutions, as specified, to continue to comply with Title IX
requirements relating to athletics by relying on various sources of
information rather than a single survey to determine whether the
institution is fully and effectively accommodating the athletic interests
and abilities of both sexes.*

Fiscal committee: no.

- 1 WHEREAS, On June 23, 1972, President Richard M. Nixon
- 2 signed into law the Education Amendments of 1972, which

1 amended the Civil Rights Act of 1964, a bill that had been
2 previously passed by both houses of the 92nd Congress; and

3 WHEREAS, The landmark legislation that was enacted into
4 law that day by the president's signature included Title IX, which
5 provides, in part, that: "No person in the United States shall, on
6 the basis of sex, be excluded from participation in, be denied the
7 benefits of, or be subjected to discrimination under any education
8 program or activity receiving Federal financial assistance"; and

9 WHEREAS, While Title IX applies to all aspects of
10 educational opportunity, it is especially well-known for opening
11 the door to athletic opportunities for girls and women throughout
12 the United States; and

13 WHEREAS, The enactment of Title IX has enhanced the
14 academic lives of millions of American girls and women by
15 allowing them to more fully participate in all campus activities,
16 including athletics; and

17 WHEREAS, Title IX has been a major factor in the rapid
18 growth of levels of participation in girls' and women's athletics
19 in this country and the resulting high profile of an
20 ever-increasing number of outstanding female athletes in every
21 region of the United States; ~~now, therefore, be it and~~

22 *WHEREAS, It is the policy of the state to provide opportunities*
23 *and encourage participation in athletics programs at all*
24 *educational institutions in California, including K-12, California*
25 *Community Colleges, campuses of the California State*
26 *University, and campuses of the University of California on an*
27 *equal basis to male and female students; and*

28 *WHEREAS, In June 2002, the United States Secretary of*
29 *Education created the Secretary's Commission on Opportunity in*
30 *Athletics which met for eight months and heard public testimony*
31 *from around the nation, including in San Diego, California,*
32 *about the need to protect and preserve Title IX. Given the strong*
33 *public support for furthering the goal of increasing athletic*
34 *opportunities for girls and women, the department's July 11,*
35 *2003, policy letter reaffirmed the importance of Title IX and*
36 *promised enforcement of the three-prong test for compliance;*
37 *and*

38 *WHEREAS, On March 18, 2005, the United States Department*
39 *of Education, Office for Civil Rights, without warning, or any*
40 *opportunity for public comment, issued a revision to its policy*

1 relating to Title IX intercollegiate athletics entitled “Additional
2 Clarification of Intercollegiate Athletics Policy. Three Part
3 Test—Part Three” that allows institutions to demonstrate
4 compliance with Title IX requirements relating to intercollegiate
5 athletics by relying on the results of a single survey of students,
6 which may be administered by electronic mail, to determine
7 whether the institution is fully and effectively accommodating the
8 athletic interests and abilities of the underrepresented sex. This
9 revision ignores the recommendation of the 2003 Secretary of
10 Education’s Commission on Opportunity in Athletics that “the
11 Department of Education should not change policies in a way
12 that would threaten any progress in creating athletic
13 opportunities for women”; and

14 WHEREAS, The reliance on a single survey, whether
15 administered by electronic mail or not, rather than the continued
16 reliance on various sources of information to determine whether
17 educational institutions are fully and effectively accommodating
18 the athletic interests and abilities of the underrepresented sex
19 will severely jeopardize athletic opportunities for women and
20 girls at all educational levels in California; and

21 WHEREAS, The use of surveys alone as a means of
22 determining in the first instance whether a school is fully and
23 effectively accommodating the athletic interests and abilities of
24 the underrepresented sex has been rejected by a federal court
25 (*Cohen v. Brown University*, (1st Cir. 1996) 101 F.3d 155,
26 179-180); and

27 WHEREAS, Through the enactment of Assembly Bill No. 833
28 of the 2003-04 Regular Session (Chapter 660, Statutes of 2003),
29 California adopted legislation that expressly establishes the use
30 of the three-part test articulated in the policies and regulations of
31 the United States Department of Education, Office for Civil
32 Rights, as it existed and was interpreted on January 1, 2003, as
33 the basis for determining whether a postsecondary educational
34 institution has effectively accommodated the athletic interests
35 and abilities of members of both sexes; now, therefore, be it

36 Resolved by the Assembly of the State of California, the Senate
37 thereof concurring, That, on the occasion of the 33rd anniversary
38 of the enactment of Title IX of the Education Amendments of
39 1972 as an amendment to the Civil Rights Act of 1964, the
40 Legislature of the State of California acknowledges the many

1 ways in which that landmark enactment has enriched the lives of
2 millions of Americans, and urges all Californians to
3 appropriately recognize this anniversary in the inclusive spirit of
4 Title IX; and be it further

5 *RESOLVED, That all educational institutions in California,*
6 *including the California Community Colleges, the California*
7 *State University, the University of California, and private*
8 *institutions of higher education in California are urged to refrain*
9 *from relying on a single method of determining female student*
10 *interest in athletics as provided by the revised Title IX policy*
11 *released by the United States Department of Education, Office of*
12 *Civil Rights; and be it further*

13 *Resolved, That the Chief Clerk of the Assembly present a*
14 *suitably prepared copy of this resolution to the author for*
15 *appropriate distribution.*